



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**DEC 23 2015**

Jane A. Deterding  
Colwich, KS 67030

RE: MUR 6849

Dear Ms. Deterding:

On December 17, 2015, the Federal Election Commission reviewed the allegations in your complaint received June 25, 2014, and found that on the basis of the information provided in your complaint and information provided by the Respondents that there is no reason to believe that Kansans for Responsible Government and Willis Hartman, in his official capacity as treasurer; Michael O'Donnell; or Hartman Oil Company, Inc. violated 52 U.S.C. §§ 30116(a) or 30118(a) with regard to the alleged republication of campaign material, and no reason to believe that Kansans for Responsible Government and Willis Hartman, in his official capacity as treasurer, violated 52 U.S.C. § 30104(b) by failing to report a disbursement for the poll. Further, the Commission dismissed the allegations that Kansans for Responsible Government and Willis Hartman, in his official capacity as treasurer; Kansans for Tiahrt and George Bruce, in his official capacity as treasurer; Todd Tiahrt; Hartman Oil Company, Inc.; PostNet; Willis Hartman; Michael O'Donnell; and Jim Anderson made or received a contribution in connection with the radio advertisement, as alleged in this matter, and dismissed the allegations that Kansans for Responsible Government and Willis Hartman, in his official capacity as treasurer, violated 52 U.S.C. § 30120(a) by failing to include a proper disclaimer on the advertisement at issue in the Complaint. Accordingly, on December 17, 2015, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explain the Commission's findings, is enclosed.

11-10-68

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL & LEGAL ANALYSIS**

**RESPONDENTS:** Todd Tiahrt MUR: 6849  
Kansans for Tiahrt and George Bruce  
in his official capacity as treasurer  
Kansans for Responsible Government  
and Willis "Wink" Hartman in his official capacity as treasurer  
Hartman Oil Company, Inc.  
Willis "Wink" Hartman  
Michael O'Donnell  
PostNet  
Jim Anderson

**I. INTRODUCTION**

This matter was generated by a Complaint alleging that an independent expenditure-only political committee, Kansans for Responsible Government ("KRG"), through individuals and entities associated with KRG, made excessive or prohibited in-kind contributions to federal candidate Todd Tiahrt by coordinating a radio advertisement that KRG ran in support of Tiahrt. The Complaint lists a number of "connections" between Tiahrt and his principal campaign committee, Kansans for Tiahrt and George Bruce in his official capacity as treasurer (the "Tiahrt Committee"), on the one hand, and KRG and its treasurer, Willis "Wink" Hartman ("Hartman"), and a variety of individuals and entities connected to KRG, on the other hand. The Complaint also alleges that: (1) KRG republished Tiahrt Committee campaign materials; (2) an employee of a company owned by Hartman republished a Tiahrt Committee communication through Twitter; (3) KRG failed to disclose expenditures for a poll; and (4) KRG failed to include a full disclaimer on a radio advertisement supporting Tiahrt. Respondents deny the allegations.<sup>1</sup>

<sup>1</sup> Three responses to the Complaint were submitted: (1) a joint Response from Tiahrt and the Tiahrt Committee ("Tiahrt Resp."), (2) a joint response from KRG, Hartman, and O'Donnell ("KRG Resp."), and (3) a joint response from Jim Anderson and PostNet ("PostNet Resp.").

As discussed below, the Commission exercises its prosecutorial discretion to dismiss the allegations that Respondents made or received an in-kind contribution to the Tiahrt Committee in connection with the radio advertisement alleged in the Complaint.<sup>2</sup> Additionally, the Commission finds no reason to believe that KRG, Michael O'Donnell, or Hartman Oil, Inc. violated 52 U.S.C. §§ 30116(a) or 30118(a) with regard to the alleged republication of campaign materials. Because it appears that these reported disbursements were for the poll in question, the Commission finds no reason to believe that Kansans for Responsible Government and Willis "Wink" Hartman, in his official capacity as treasurer, violated 52 U.S.C. § 30104(b) by failing to report its disbursements for the poll. Finally, the Commission also dismisses the allegations that KRG violated 52 U.S.C. § 30120(a).<sup>3</sup>

## II. FACTUAL AND LEGAL ANALYSIS

### A. Background

On May 29, 2014, Todd Tiahrt announced his candidacy for the 4th Congressional District of Kansas.<sup>4</sup> On June 5, 2014, Tiahrt filed a Statement of Candidacy and the Tiahrt Committee filed its Statement of Organization.

KRG registered as an IEOPC on May 13, 2014, and Hartman is its treasurer. Hartman ran unsuccessfully for Congress in 2010 against Mike Pompeo, Tiahrt's opponent in 2014. During 2014, KRG received contributions of \$295,130, of which \$285,000 came from Hartman,

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<sup>2</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>3</sup> *Id.*

<sup>4</sup> Compl., Ex. 6 (Letter, Todd Tiahrt for Congress). Todd Tiahrt was the U.S. Representative for Kansas's 4th Congressional district from 1995 to 2011. Tiahrt ran unsuccessfully in 2010 for the U.S. Senate.

1 and made \$266,155 in independent expenditures, all of which supported Tiahrt or opposed Mike  
2 Pompeo, Tiahrt's primary opponent.<sup>5</sup>

3 Hartman is also the president of Hartman Oil, and Michael O'Donnell — who served as  
4 communications director for Hartman's 2010 unsuccessful campaign — is the company's  
5 communications director. O'Donnell has served as a Kansas state senator since January 2013.

6 PostNet is a franchised business in Wichita that offers mailbox rentals and other services,  
7 including copying, printing, and shipping.<sup>6</sup> Jim Anderson owns and operates a PostNet  
8 franchise.<sup>7</sup> KRG rents a mailbox from PostNet, which serves KRG's official address, and the  
9 Tiahrt Committee's disclosure reports show disbursements to PostNet for copying, printing,  
10 flyers, palm cards, and signs.<sup>8</sup>

11 **B. Coordination**

12 The Complaint alleges that KRG, through individuals and entities associated with KRG  
13 specifically, Hartman Oil, Hartman, O'Donnell, and PostNet and Anderson,<sup>9</sup> made excessive or  
14 prohibited in-kind contributions to the Tiahrt Committee by coordinating a June 2014 radio

<sup>5</sup> See KRG's 24/48 hour Independent Expenditure Reports (Schedule Es) dated June 3, 21, and 27 and July 10, 11, 18, 24, and 31, 2014.

<sup>6</sup> See KRG Resp. ¶ 14; *see also generally* PostNet Resp.

<sup>7</sup> PostNet Resp. at 1

<sup>8</sup> See KRG's 2014 July Quarterly, 2014 12-Day Pre-Primary, and 2014 October Quarterly reports.

<sup>9</sup> The Complaint appears to allege that KRG's rental of a mailbox at PostNet and the printing and distribution of the Tiahrt Committee's yard signs at PostNet, coupled with Anderson's appearance on Tiahrt's radio show, indicate coordination under a "common vendor" theory pursuant to 11 C.F.R. § 109.21(d)(4). Compl. ¶ 14, 21. In a joint Response, Anderson and PostNet deny that KRG and PostNet share the same address; they explain that PostNet rents 100 private mailboxes, and the mailboxes are legally separate addresses from PostNet's business address. PostNet Resp. Tiahrt states that PostNet provides printing services, and his committee ordered signs from PostNet, an expenditure it disclosed to the Commission. Tiahrt Resp. ¶ 21. KRG concedes that KRG also rents a mailbox at PostNet, but asserts that this fact does not make PostNet a "common vendor" under the conduct prong. KRG Resp. ¶ 21. These facts do not make PostNet a "common vendor" because KRG, the entity paying for the radio advertisement, did not use PostNet to create, produce, or distribute the communication. *See* 11 C.F.R. § 109.21(d)(4)(i). Rather, KRG used Strategic Media Services for the radio advertisement. In any event, none of these facts constitute coordination in connection with KRG's radio advertisement.

1 advertisement that KRG ran in support of Tiahrt.<sup>10</sup> The Complaint lists a number of  
2 "connections" between Tiahrt and KRG and Hartman, noting that Tiahrt's Wichita office is  
3 located in the same building as Hartman Oil;<sup>11</sup> Hartman and his wife hosted a reception for  
4 Tiahrt during the Kansas Republican Party's Kansas Day Activities; and Hartman made  
5 contributions to Tiahrt's past election efforts.<sup>12</sup> The Complaint also notes that Hartman sent an  
6 email inviting guests to a fundraiser on behalf of Tiahrt at Chester's Chophouse, a restaurant in  
7 which Hartman has majority ownership.<sup>13</sup> The Complaint further notes that Hartman hosted a  
8 radio show in which he expressed his support for Tiahrt and that Hartman's employee,  
9 O'Donnell, helped both Hartman and Tiahrt to establish talk shows on KQAM 1480 AM, a local  
10 radio station.<sup>14</sup>

11 Under the Act, an expenditure made by any person in cooperation, consultation, or  
12 concert with, or at the request or suggestion of, a candidate, his authorized political committees,

<sup>10</sup> Compl. at 1, 5-8. KRG reported making a \$15,500 independent expenditure on June 2, 2014, apparently for the radio advertisement supporting Tiahrt. See KRG's 2014 July Quarterly Report, 48 Hour Report of Independent Expenditures (Schedule E), dated June 3, 2014.

<sup>11</sup> Respondents assert that Tiahrt moved his business offices from Hartman Oil's building a year before he announced his candidacy.

<sup>12</sup> Compl. ¶¶ 1, 3, 8.

<sup>13</sup> Compl. ¶ 10, Ex. 11. The Complaint appears to suggest that Hartman's role in emailing the invitation to the fundraiser for Tiahrt and the fundraiser's location at a restaurant in which Hartman has an ownership interest raise questions as to whether the event resulted in an in-kind contribution from KRG or Hartman to the Tiahrt Committee. KRG asserts that it was not involved with the fundraiser and notes that the invitation "did not mention [KRG] or its efforts," KRG Resp. ¶ 10, and the fundraiser appears to have been paid for by the Tiahrt Committee — the Committee's disclosure reports show that on June 30, 2014, the Tiahrt Committee made a \$952.75 disbursement to the restaurant, for "Fundraiser — food/beverages," see Tiahrt Committee's 2014 July Quarterly Report.

<sup>14</sup> *Id.* at 2-3. Tiahrt asserts that the allegation is unsubstantiated, and that he was invited by the KQAM General Manager to host a talk show as part of the radio station's new weekly talk show lineup, and several local business and political leaders also accepted the station's invitation to host programs. Tiahrt Resp. ¶ 12. According to KRG, O'Donnell denies having brokered any deal and said he first learned of the shows a week before Tiahrt and Hartman were scheduled to host their first shows. KRG Resp. ¶ 12. KRG also asserts the Complaint does not explain the connection between radio shows and KRG's radio communications at issue in the Complaint. *Id.*

1 or their agents, is considered a contribution to such candidate.<sup>15</sup> Communications that are paid  
2 for by a third party, but coordinated with a candidate, are also in-kind contributions to the  
3 candidate.<sup>16</sup> Under Commission regulations, a communication is coordinated if it: (1) is paid for  
4 by a person other than the candidate or candidate's committee; (2) satisfies one or more of four  
5 content standards set forth at 11 C.F.R. § 109.21(c);<sup>17</sup> and (3) satisfies one or more of six  
6 conduct standards set forth at 11 C.F.R. § 109.21(d).<sup>18</sup>

7 In this matter, the payment and content prongs are satisfied,<sup>19</sup> so the issue is whether the  
8 advertisement satisfied the conduct prong. The Complaint argues that the conduct prong is

<sup>15</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a). The candidate must report a coordinated contribution as both a contribution received and as an expenditure. 11 C.F.R. §§ 109.20(b) and 109.21(b). Corporations, such as Hartman Oil and PostNet, and IEOPCs, such as KRG, are prohibited from making direct or in-kind contributions to federal candidates. 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a); *see* Advisory Opinion 2010-11 (Commonsense Ten); *see also* FEC Press Release (Oct. 9, 2014), [http://www.fec.gov/press/press2014/news\\_releases/20141009release.shtml](http://www.fec.gov/press/press2014/news_releases/20141009release.shtml); FEC Agenda Document 14-53-A, Final Rules on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations (Oct. 8, 2014), [http://www.fec.gov/agenda/2014/documents/mtgdoc\\_14-53-a.pdf](http://www.fec.gov/agenda/2014/documents/mtgdoc_14-53-a.pdf). Further, as corporate officers, Hartman, O'Donnell, and Anderson are prohibited from consenting to any contribution or expenditure by the corporation, 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), and as individuals, they may not contribute more than \$2,700 per candidate per election. 52 U.S.C. § 30116(a)(1)(A).

<sup>16</sup> 11 C.F.R. § 109.20.

<sup>17</sup> The content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication, in relevant part, that refers to a clearly identified House or Senate candidate, and is publicly distributed or disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the candidate's primary election; or (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c)(1)-(5). The term "public communication" encompasses broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank, or any other form of general public political advertising, and including communications over the internet placed for a fee on another person's website. *Id.* § 100.26.

<sup>18</sup> The six types of conduct that satisfy the conduct standard are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication. *Id.* § 109.21(d).

<sup>19</sup> The Complaint asserts -- and the facts support -- that KRG paid for the radio advertisement and the advertisement meets the content standard. KRG reported the radio advertisement as an independent expenditure in support of Tiahrt. The advertisement is a public communication that expressly advocates the election of Tiahrt, a clearly identified candidate for federal office. *See* 11 C.F.R. § 109.21(c)(3).

1 satisfied because Tiahrt either requested, suggested, or was materially involved in the making of  
2 KRG's advertisement given Hartman's general political support of and close ties to Tiahrt.<sup>20</sup> It  
3 also alleges that the similarity to Tiahrt's own campaign messages demonstrates that KRG and  
4 the Committee coordinated,<sup>21</sup> providing a chart intended to show similarities between the  
5 content of KRG's advertisement and selected portions of the Tiahrt Committee's website.<sup>22</sup>

6 Respondents argue that many of the factual allegations in the Complaint are false or  
7 misleading, and that others, while true, do not support a finding of coordination.<sup>23</sup> Respondents  
8 also argue that the radio advertisement does not copy or repeat verbatim the website's content  
9 and instead reflects KRG's own message based on national issues or themes one would expect to  
10 be discussed in a Republican primary in Kansas.<sup>24</sup>

11 The close relationship between Hartman and Tiahrt, the advertisement's timing in close  
12 proximity to the launch of Tiahrt's campaign, and the advertisement's similarity to Tiahrt's own  
13 campaign messages may raise questions about whether the conduct prong is met here.<sup>25</sup>  
14 Further, the record suggests some specific interactions between Tiahrt and individuals associated  
15 with KRG prior to his candidacy, and that once Tiahrt became a candidate, KRG and Hartman in  
16 particular supported that candidacy. However, without more, the Commission concludes that  
17 pursuing this matter further would not be an efficient use of the Commission's resources and

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<sup>20</sup> 11 C.F.R. § 109.21(d)(1)-(3).

<sup>21</sup> Compl. at 7.

<sup>22</sup> *Id.* at 5.

<sup>23</sup> Tiahrt Resp.; KRG Resp.

<sup>24</sup> KRG Resp. ¶ 18; Tiahrt Resp. ¶ 18.

<sup>25</sup> See Compl. at 5-7.



1 exercises its prosecutorial discretion to dismiss the Complaint's allegations that Respondents  
2 made or received in-kind contributions in connection with the radio advertisement.

3 **C. Republication of Campaign Materials**

4 The Complaint alleges that O'Donnell, Hartman Oil's Communications Director, "re-  
5 tweeted" a communication criticizing Tiahrt's opponent that states: "Bring it on, Tiahrt! I won't  
6 monitor your calls, I promise ;)." <sup>26</sup> The June 4, 2014, re-tweet appears to be a statement from an  
7 anonymous Twitter account called "Congressman Phonetap." <sup>27</sup>

8 Under the Act, the "financing by any person of the . . . republication, in whole or in part,  
9 of any broadcast or any written, graphic, or other form of campaign materials prepared by the  
10 candidate, his campaign committees, or their authorized agents shall be considered an  
11 expenditure." <sup>28</sup> Here, however, O'Donnell did not republish any statement that originated from  
12 Tiahrt's campaign materials, so the Act's republication provision does not apply. Therefore, the  
13 Commission finds no reason to believe that Michael O'Donnell violated 52 U.S.C. §§ 30116(a)  
14 and 30118(a), and no reason to believe that Hartman Oil, Inc. violated 52 U.S.C. § 30118(a). <sup>29</sup>

15 **D. Alleged Failure by KRG to Report Expenditure for Poll**

16 The Complaint alleges that KRG did not report the expenditure for a "misleading push  
17 poll" conducted after KRG's radio ad campaign. <sup>30</sup> KRG states that its poll was a legitimate

<sup>26</sup> Compl. ¶ 17, Ex. 15.

<sup>27</sup> Tiahrt Resp. ¶ 17.

<sup>28</sup> 52 U.S.C. § 30116(a)(7)(B)(iii); *see also* 11 C.F.R. § 109.23(a).

<sup>29</sup> Furthermore, to the extent that the Complaint can be read to allege that KRG republished Tiahrt's campaign material in the allegedly coordinated radio advertisement discussed above, the wording of the radio advertisement sufficiently varies from Tiahrt's campaign material in its words and phrasing such that the similarities "do not appear to rise to a level sufficient to indicate republication of campaign material." Thus, the Commission finds no reason to believe that KRG or Willis Hartman, in his official capacity as treasurer, violated 52 U.S.C. §§ 30116(a) and 30118(a) with regard to the alleged republication.

<sup>30</sup> Compl. ¶¶ 19, 5, 7.

1 opinion poll, which it properly reported as an expenditure to Twin Oaks Connect on its 2014 Pre-  
2 Primary Report.<sup>31</sup> Indeed, KRG disclosed, on its 2014 Pre-Primary and October Quarterly  
3 Reports, disbursements to Twin Oaks Connect, in the amounts of \$4,419 and \$951 on July 10,  
4 2014, and July 23, 2014, respectively, for “marketing services.”<sup>32</sup> Because it appears that these  
5 reported disbursements were for the poll in question, the Commission finds no reason to believe  
6 that KRG and Willis “Wink” Hartman, in his official capacity as treasurer, violated 52 U.S.C.  
7 § 30104(b) by failing to report its disbursements for the poll.

8 **E. Alleged Disclaimer Violation for KRG Radio Advertisement**

9 Finally, the Complaint alleges that KRG failed to include its permanent street address,  
10 telephone number, or URL address in the disclaimer of the radio advertisement discussed  
11 above.<sup>33</sup> The ad’s disclaimer states: “Kansans for Responsible Government is responsible for  
12 the content of this advertising. Paid for by Kansans for Responsible Government and not  
13 authorized by any candidate, or candidate’s committee.”<sup>34</sup>

14 KRG requests that the Commission exercise its prosecutorial discretion to dismiss the  
15 allegation, asserting that the Complaint did not provide an actual copy of the advertisement or a  
16 website link, but even if the advertisement lacked the information as alleged, the disclaimer  
17 complies with most of the regulatory requirements — since it stated that KRG paid for and was  
18 responsible for the advertisement — and the information missing from the disclaimer can be  
19 found by running a web search of KRG’s name.<sup>35</sup>

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<sup>31</sup> KRG Resp. ¶ 19.

<sup>32</sup> KRG’s 2014 12-Day Pre-Primary Report at 7, and 2014 October Quarterly Report at 9.

<sup>33</sup> *See* Compl. ¶ 20, Ex. 17.

<sup>34</sup> *Id.*

<sup>35</sup> KRG Resp. ¶ 20.

1 Any public communication, such as KRG's radio advertisement, made by a political  
2 committee must include a disclaimer.<sup>36</sup> If the communication is not authorized by a candidate, a  
3 candidate's authorized political committee, or any agent, the disclaimer must state the name and  
4 street address, telephone number, or website address of the person who paid for the  
5 communication and state that the communication is not authorized by any candidate or  
6 candidate's committee.<sup>37</sup>

7 The radio advertisement's disclaimer, though it did state that KRG paid for the  
8 advertisement and that a candidate did not authorize it, was incomplete because it lacked the  
9 Committee's phone number, website address, or street address. In light of the partial disclaimer,  
10 however, the Commission exercises its prosecutorial discretion to dismiss the allegation that  
11 KRG and Willis Hartman, in his official capacity as treasurer, violated 52 U.S.C. § 30120(a).

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<sup>36</sup> 52 U.S.C. § 30120; 11 C.F.R. § 110.11(a)(1).

<sup>37</sup> 11 C.F.R. § 110.11(b)(3), (d)(3).